

AMENDED IN ASSEMBLY MARCH 24, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 410**

**Introduced by Assembly Member Lempert** *Members  
Lempert and Papan*

February 12, 1999

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An act to amend Section ~~17003~~ 17312 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 410, as amended, Lempert. Escrow agents.

Existing law, the Escrow Law, provides for the licensure and regulation of escrow agents. *Every person licensed pursuant to that law is required to participate as a member of the Escrow Agents' Fidelity Corporation (Fidelity Corporation).*

~~This bill would make a technical, nonsubstantive change in that law~~ *limit that membership requirement to those persons engaged in the business of receiving escrows in certain types of transactions. The bill would require the Commissioner of Corporations to establish indemnity bond standards for licensees receiving escrows for other types of transactions. The bill would require that under certain circumstances an escrow agent maintain separate books and records of accounts for each type of escrow business and maintain separate trust accounts.*

*Existing law provides that a willful violation of the Escrow Law is a crime punishable as either a felony or misdemeanor.*

*By establishing new requirements for escrow agents, the violation of which would be a crime, this bill would impose a state-mandated local program by creating a new crime.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.*

*The people of the State of California do enact as follows:*

1   ~~SECTION 1. Section 17003 of the Financial Code is~~  
 2   *SECTION 1. Section 17312 of the Financial Code is*  
 3   *amended to read:*  
 4   17312. (a) Each person licensed pursuant to ~~the~~  
 5   ~~provisions of~~ this division *who is engaged in the business*  
 6   *of receiving escrows specified in subdivision (c) shall*  
 7   *participate as a member in Fidelity Corporation in*  
 8   *accordance with this chapter and rules to be established*  
 9   *by the board of directors of Fidelity Corporation. Fidelity*  
 10   *Corporation shall not deny membership to any escrow*  
 11   *agent holding a valid unrevoked license under the*  
 12   *Escrow Law who is required to be a member under this*  
 13   *subdivision.*  
 14   (b) Upon filing a new application for licensure as  
 15   required by subdivision (b) of Section 17213, *persons*  
 16   *required to be a member of Fidelity Corporation shall file*  
 17   *a copy thereof shall be filed* concurrently with Fidelity  
 18   Corporation, but no additional membership fee or  
 19   deposit shall be required.  
 20   (c) *The required membership in Fidelity Corporation*  
 21   *shall be limited to those licensees who engage in the*  
 22   *business of receiving escrows for deposit or delivery in the*  
 23   *following types of transactions:*  
 24   (1) *Real property escrows, including, but not limited*  
 25   *to, the sale, lease, exchange, or transfer of title, and loans*

1 or other obligations to be secured by a lien upon real  
2 property.

3 (2) Bulk sale escrows, including, but not limited to, the  
4 sale or transfer of title to a business entity and the transfer  
5 of liquor licenses or other types of business licenses or  
6 permits.

7 (3) Fund or joint control escrows, including, but not  
8 limited to, transactions specified in Section 17005.1, and  
9 contracts specified in Section 10263 of the Public Contract  
10 Code.

11 (4) The sale, transfer of title, or refinance escrows for  
12 manufactured homes or mobilehomes.

13 (5) Reservation deposits required under Article 2  
14 (commencing with Section 11010) of Chapter 1 of Part 2  
15 of Division 4 of the Business and Professions Code or by  
16 regulation of the Department of Real Estate to be held in  
17 an escrow account.

18 (6) Escrows for sale, transfer, modification,  
19 assignment, or hypothecation of promissory notes  
20 secured by deeds of trust.

21 (d) Fidelity Corporation surety indemnity coverage  
22 specified in this chapter shall be provided only to  
23 members for loss of trust obligations arising from or  
24 created by those types of transactions specified in  
25 subdivision (c).

26 (e) The commissioner shall establish required  
27 indemnity bond standards as specified in Sections 17202  
28 and 17203.1. A licensee shall deposit that bond with the  
29 commissioner as a condition of receiving any escrows for  
30 deposit or delivery that are not of the types specified in  
31 subdivision (c).

32 (f) The rules and regulations of the commissioner for  
33 joint control agents, and Sections 17311, 17320 to 17324,  
34 inclusive, 17330 to 17331.3, inclusive, and 17348 shall not  
35 apply to a licensee who is (1) not required to be a member  
36 of Fidelity Corporation under subdivision (a); and (2)  
37 who is solely engaged in the business of receiving escrows  
38 not specified in subdivision (c); and (3) who is subject to  
39 the indemnity bond deposit required by subdivision (e).

1 (g) A licensee engaged in the business of receiving  
2 escrows as specified in subdivisions (c) and (e) shall  
3 maintain for each type of escrow business, separate books  
4 and records of account, and shall maintain separate trust  
5 accounts in the same manner as specified in Sections  
6 17409 to 17411.1, inclusive. The exclusions of otherwise  
7 applicable sections specified in subdivision (f) are not  
8 applicable notwithstanding that a licensee shall comply  
9 therewith with respect to those types of escrow business  
10 specified in subdivision (c).

11 (h) The commissioner may establish additional rules  
12 that are reasonable and necessary to prevent unsafe or  
13 injurious practices by any licensee who is engaged in  
14 receiving escrows of a type not specified in subdivision  
15 (c) and who is subject to the indemnity bond deposit  
16 requirement of subdivision (e).

17 SEC. 2. No reimbursement is required by this act  
18 pursuant to Section 6 of Article XIII B of the California  
19 Constitution because the only costs that may be incurred  
20 by a local agency or school district will be incurred  
21 because this act creates a new crime or infraction,  
22 eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition  
25 of a crime within the meaning of Section 6 of Article  
26 XIII B of the California Constitution.

27 amended to read:

28 ~~17003. "Escrow" means any transaction wherein one~~  
29 ~~person, for the purpose of effecting the sale, transfer,~~  
30 ~~encumbering, or leasing of real or personal property to~~  
31 ~~another person, delivers any written instrument, money,~~  
32 ~~evidence of title to real or personal property, or other~~  
33 ~~thing of value to a third person to be held by the third~~  
34 ~~person until the happening of a specified event or the~~  
35 ~~performance of a prescribed condition, when it is then to~~  
36 ~~be delivered by the third person to a grantee, grantor,~~  
37 ~~promisee, promisor, obligee, obligor, bailee, bailor, or any~~  
38 ~~agent or employee of any of the latter.~~